

9. Likewise, three other Holy Rosary FRNs, 1262653, 1262679, and 1262691, approved by USAC and totaling approximately \$40,000, were never funded because Future determined upon inspection of the school and its technology needs that the services/equipment were unnecessary and impractical.
10. Plainly, under these circumstances, it cannot be said that our misplacing the written contract(s) points to some nefarious arrangement between the company and the school or its personnel. After all, had there been a plan, scheme or conspiracy to defraud USAC, both parties would have sought funding of the unfunded FRNs, which equaled four times the amount covered by the missing contract(s).
11. Accordingly, I request that USAC grant the within appeal and reverse or withdraw its funding adjustment letters to the now defunct Holy Rosary Elementary School of Union City, New Jersey. Alternatively, I ask that USAC grant, if it can, or request of FCC if it cannot, a waiver sufficient to put this matter to rest.


SCOTT DeCAROLIS

Sworn to and subscribed before me
on this 9th day of May 2009.
JUR



RAYMOND BARTA
ATTORNEY AT LAW FOR
STATE OF NEW JERSEY

EXHIBIT A TO AFFIDAVIT OF SCOTT De CAROLIS

Maintenance Visits

Month	Date of Visit	Length of Visit
July	7/6/2005	2 hours
	7/25/2005	2 hours
August	8/10/2005	2 hours
	8/25/2005	8 hours
September	9/8/2005	2 hours
	9/19/2005	2 hours
	9/27/2005	2.5 hours
October	10/3/2005	2 hours
	10/18/05	2 hours
November	11/2/2005	3 hours
	11/17/2005	2 hours
	11/30/2005	2 hours
December	12/6/2005	2 hours
	12/22/05	2 hours
January	1/11/2006	2 hours
	1/13/2006	2 hours
	1/16/2006	2 hours
	1/19/2006	2 hours
	1/30/2006	2 hours
February	2/15/2006	2 hours
	2/27/2006	2 hours
March	3/8/2006	3 hours
	3/21/2006	3 hours
April	4/3/2006	2 hours
	4/17/2006	2 hours
May	5/3/06	2 hours
	5/16/2006	2 hours
June	6/5/2006	2 hours
	6/12/06	2 hours

Testimony
Harry Brown
Doc
 1962

Remote Support / Administration

7/8/2005	1.5 hours
7/15/2005	1.5 hours
7/22/2005	1.5 hours
7/29/2005	1.5 hours
8/5/2005	1.5 hours
8/12/2005	1.5 hours
8/19/2005	1.5 hours
8/26/2005	1.5 hours
9/9/2005	1.5 hours
9/16/2005	1.5 hours
9/23/2005	1.5 hours
9/30/2005	1.5 hours
10/7/2005	1.5 hours
10/14/2005	1.5 hours
10/21/2005	1.5 hours
10/28/2005	1.5 hours
11/11/2005	1.5 hours
11/18/2005	1.5 hours
11/25/2005	1.5 hours
12/2/2005	1.5 hours
12/9/2005	1.5 hours
12/16/2005	1.5 hours
12/23/2005	1.5 hours
12/30/2005	1.5 hours
1/6/2006	1.5 hours
1/13/2006	1.5 hours
1/20/2006	1.5 hours
1/27/2006	1.5 hours
2/3/2006	1.5 hours
2/10/2006	1.5 hours
2/17/2006	1.5 hours
2/24/2006	1.5 hours
3/3/2006	1.5 hours
3/10/2006	1.5 hours
3/17/2006	1.5 hours
3/24/2006	1.5 hours
3/31/2006	1.5 hours
4/7/2006	1.5 hours
4/14/2006	1.5 hours
4/21/2006	1.5 hours
4/28/2006	1.5 hours
5/5/2006	1.5 hours
5/12/2006	1.5 hours
5/19/2006	1.5 hours
5/26/2006	1.5 hours
6/2/2006	1.5 hours
6/9/2006	1.5 hours
6/16/2006	1.5 hours
6/23/2006	1.5 hours
6/30/2006	1.5 hours

KAPS & BARTO, ATTORNEYS AT LAW

WARREN J. KAPS
RAYMOND BARTO
MATTHEW E. BLACKMAN

FAXED
2-15-08

15 WARREN STREET

HACKENSACK, N.J.

07601

TEL: 201.489.5277

FAX: 201.489.0477

EMAIL:

Raymondbarto@hotmail.com

KAPSBARTO@MSN.COM

F A C S I M I L E

DATE: February 15, 2008
(2:59pm)

FROM: Raymond Barto

TO: Mr. Gary Tarantino
USAC
Audit Compliance

RE: Holy Rosary Elementary
Academy Applications 458734
and 459674

COPY:

PAGES: 9

Dear Gary:

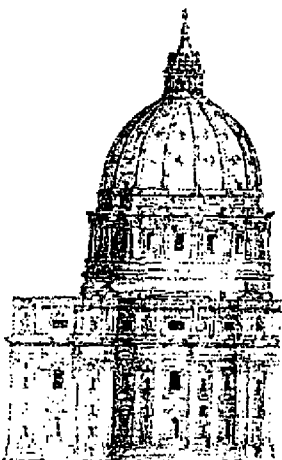
Attached you will find a spreadsheet description of the Holy Rosary applications provided by Future Generation. As I previously communicated, the school is closed, but Future Generation has been able to locate copies of the contracts from its computer files.

For your review, I am attaching copies of the contracts and of the FCDL referenced by the spreadsheet. I do not anticipate obtaining any more information with respect to this school.

Raymond Barto

*Copy by fax: Future Generation
Bruce Chase, Esq.
Francis Schiller, Esq.*

Copy by mail: Dr. Hart (Archdiocese)



CONFIDENTIAL COMMUNICATION

This fax memorandum and any attached documents may contain confidential information or may be privileged attorney/client communications. Unauthorized disclosure is prohibited. If received in error, the reading, copying or disclosure of the information contained herein is prohibited. Please call (201) 489-5277 immediately. Your cooperation is appreciated.

Pa 39

Applicant	471 Application	FRN #	Contract ID	FRN Amount	Status	Comments					
Holy Rosary Academy	458734	1260032	1729	\$ 369.50	Approved; funded (\$332.55)	Unable to located signed contracts; school closed June 2006					
	459674	1262653	1508	\$ 19,962.22	Approved; not Invoiced / not funded*	*At the time funding was granted, items were not appropriate for the					
		1262669	1509	\$ 9,900.00	Approved; funded (\$8910.00)	school; decided against proceeding with these FRNs. Therefore,					
		1262679	1510	\$ 9,141.55	Approved; not Invoiced / not funded*	not Invoiced / not funded					
		1262686	1511	\$ 3,795.00	Approved; funded (\$1707.75)						
		1262691	1512	\$ 8,858.20	Approved; not Invoiced / not funded*†	†Approved FRN amount, contract reduced per FRN					

Pc40

Future Generation

220 Kinderkamack Road
Westwood, NJ 07675
201 594-1670
SPIN # 143007891

CONTRACT

DATE	ID #
2/5/2005	SLD-1729

NAME / ADDRESS
Holy Rosary Elementary School 501 15th Street Union City, NJ 07087

			PROJECT
			Year 8
DESCRIPTION	QTY	COST	TOTAL
This Package includes the following services -Domain Name Registration -E-mail Account Setup			369.50
TOTAL			\$369.50

Future Generation, Inc.

Client's Signature

P241

Future Generation

220 Kinderkamack Road
Westwood, NJ 07675
201 594-1670
SPIN # 143007891

CONTRACT

DATE	ID #
1/31/2005	SLD-1508

NAME / ADDRESS
Holy Rosary Elementary School 501 15th Street Union City, NJ 07087

			PROJECT
			Year 8
DESCRIPTION	QTY	COST	TOTAL
35 Category 5e network lines from patch panel to classrooms. Each line will terminate into a single, double or quad jack in the computer lab. This installation is inclusive of all jacks and conduit where appropriate.	1	7,000.00	7,000.00
2 Cat 6 lines to be ran from the MDF to the IDF closet	1	550.00	550.00
HP ProCurve Switch 4108GL - Switch - 72 ports - EN, Fast EN - 10Base-T, 100Base-TX + 3 x GBIC (empty), English to be installed in each of the MDF and IDF closets	2	4,999.00	9,998.00
3 Foot Category 5e Patch Cable from patch panel to switch.	35	5.00	175.00
3 Foot Category 6 Patch Cable for uplink of gigabit ports on each switch.\ to the patch panel.	4	9.805	39.22
LD Wall Mount/Swing Out Cabinets provide 19" rack mounting in a distribution enclosure. Dimensions: 24" H x 21.25" W x 24.50" D to house the above wiring inclusive of patch panel and switches	2	1,100.00	2,200.00
TOTAL			\$19,962.22

Future Generation, Inc.

Client's Signature

Pe 42

Future Generation

220 Kinderkamack Road

Westwood, NJ 07675

201 594-1670

SPIN # 143007891

CONTRACT

DATE	ID #
1/31/2005	SLD-1509

NAME / ADDRESS
Holy Rosary Elementary School 501 15th Street Union City, NJ 07087

			PROJECT
			Year 8
DESCRIPTION	QTY	COST	TOTAL
1 Year Maintenance Agreement Covering Entire Network Infrastructure of School. The items to be covered are as follows: -Network Wiring -Switches EF24G2 -Wireless Access Points Proxim AP 4000 -DHCP Server ProLiant ML 350 -UPS and Tape Backup for Above Server	1	9,900.00	9,900.00
TOTAL			\$9,900.00

Future Generation, Inc.

Client's Signature

Pc 43

Future Generation

220 Kinderkamack Road
Westwood, NJ 07675
201 594-1670
SPIN # 143007891

CONTRACT

DATE	ID #
1/31/2005	SLD-1510

NAME / ADDRESS
Holy Rosary Elementary School 501 15th Street Union City, NJ 07087

			PROJECT
			Year 8
DESCRIPTION	QTY	COST	TOTAL
HP Proliant ML 350 G3 Server 1GB RAM 3 72GB SCSI HD Drives RAID 5 3Yr 9x5 4hr -Installation and configuration of Windows 2003 Standard Edition Server -Configuration of server as primary DNS server for network -Configuration of tape backup unit to perform a full backup of all files Monday through Friday and a two week rotation. -Configuration of UPS to protect server from any power spikes and power failures.	1	8,564.06	8,564.06
Windows Server Standard 2003 Media (CD)	1	32.99	32.99
Windows Server Standard 2003 English OLP	1	139.95	139.95
Windows Server CAL 2003 (Device)	45	8.99	404.55
TOTAL			\$9,141.55

Future Generation

220 Kinderkarnack Road

Westwood, NJ 07675

201 594-1670

SPIN # 143007891

CONTRACT

DATE	ID #
1/31/2005	SLD-1511

NAME / ADDRESS
Holy Rosary Elementary School 501 15th Street Union City, NJ 07087

			PROJECT
			Year 8
DESCRIPTION	QTY	COST	TOTAL
SonicWall Pro 3060 Firewall, Educational / Government Bundle, Inclusive 1 Year 8x5 support Future Generation will provide the following services: - Installation of firewall into existing network environment - Configuration of device per clients request for e-mail and terminal services - 1 year of 8x5 support	1	3,795.00	3,795.00
TOTAL			\$3,795.00

Future Generation, Inc.

Client's Signature

P. 45

Future Generation

220 Kinderkamack Road

Westwood, NJ 07675

201 594-1670

SPIN # 143007891

CONTRACT

DATE	ID #
1/31/2005	SLD-1512

NAME / ADDRESS
Holy Rosary Elementary School 501 15th Street Union City, NJ 07087

			PROJECT
			Year 8
DESCRIPTION	QTY	COST	TOTAL
VIEWSTATION MP VIDEO CONFERENCE INCLUSIVE OF INSTALLATION AND CONFIGURATION	1	10,233.21	10,233.21
NT1 ACE W/PS	1	149.99	149.99
TOTAL			\$10,383.20

Future Generation, Inc.

Client's Signature

Pe 46

FUNDING COMMITMENT REPORT
Service Provider Name: Future Generation, Inc.
SPIN: 143007891
Funding Year: 2005

Name of Billed Entity: HOLY ROSARY ELEMENTARY ACADEMY
Applicant Street Address: 501 15TH ST
Applicant City: UNION CITY
Applicant State: NJ
Applicant Zip: 07087-3222
Entity Number: 7008
Preferred Mode of Contact: PHONE
Contact Person's Name: Martha Velez
Contact Information: (201) 864-0332
Form 471 Application Number: 459674
Funding Request Number: 1262691
Funding Status: Funded
Category of Service: Internal Connections
Site Identifier: 00 86351 1
Form 470 Application Number: 197520000526811
Contract Number: 1512
Billing Account Number: N/A
Service Start Date: 07/01/2005
Contract Expiration Date: 06/30/2006
Number of Months Recurring Service Provided in Funding Year: 12
Annual Pre-Discount Amount for Eligible Recurring Charges: \$0.00
Annual Pre-Discount Amount for Eligible Non-Recurring Charges: \$8858.20
Pre-Discount Amount: \$8858.20
Applicant's Discount Percentage Approved by SLD: 90
Funding Commitment Decision: \$7972.38 - FRN approved; modified by SLD
Funding Commitment Decision Explanation: The dollars requested were reduced to
remove: the ineligible product(s)/service(s) camera and microphone and associated
installation charges.

FCDL Date: 03/15/2006
Wave Number: 039



Universal Service Administrative Company
Schools & Libraries Division

Administrator's Decision on Appeal – Funding Year 2005-2006

August 05, 2009

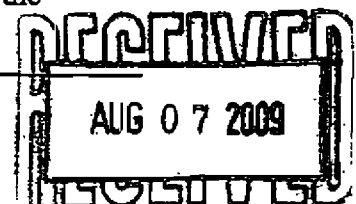
Raymond Barto
Kaps & Barto
15 Warren Street
Hackensack, NJ 07601

Re: Applicant Name: HOLY ROSARY ELEMENTARY ACADEMY
Billed Entity Number: 7008
Form 471 Application Number: 458734
Funding Request Number(s): 1260032
Your Correspondence Dated: June 09, 2009

After thorough review and investigation of all relevant facts, the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC) has made its decision in regard to your appeal of USAC's Funding Year 2005 Commitment Adjustment Letter for the Application Number indicated above. This letter explains the basis of USAC's decision. The date of this letter begins the 60 day time period for appealing this decision to the Federal Communications Commission (FCC). If your Letter of Appeal included more than one Application Number, please note that you will receive a separate letter for each application.

Funding Request Number(s): 1260032
Decision on Appeal: Denied
Explanation:

- During further review, the service provider and applicant were asked to provide a signed copy of their contract. The service provider provided a contract that was not signed. Therefore, USAC was not able to determine if Holy Rosary Elementary Academy had a signed contract in place with the service provider at the time of the filing of the Form 471. Except for services to be delivered under non-contracted tariffed or month-to-month arrangements, FCC rules require that an applicant sign a contract with the service provider before signing and submitting a completed (certified) Services Ordered and Certification Form (Form 471). Applicants must be able to demonstrate that it had a signed contract in place at the time it submitted the completed Form 471. On appeal, you confirm that a copy of the signed contract cannot be located. You also state that the



applicant has complied with state law. Although applicants must comply with state and/or local contract law, applicants must also comply with FCC rules.

- SLD has determined that, at the time you submitted your Form 471 application, you did not have a signed contract for services in place with your service provider(s) for services other than tariffed or month-to-month services. FCC rules require that applicants submit a completed FCC Form 471 "upon signing a contract for eligible services." 47 C.F.R. § 54.504(c). The FCC has consistently upheld SLD's denial of Funding Request Number(s) when there is no contract in place for the funding requested.¹ The FCC Form 471 instructions under Block 5 clearly state that you MUST sign a contract for all services that you order on your Form 471 except tariffed services and month-to-month services.² You did not provide evidence with your appeal that, at the time you signed your Form 471, you had signed a contract for eligible services. Consequently, SLD denies your appeal.

If your appeal has been approved, but funding has been reduced or denied, you may appeal these decisions to either USAC or the FCC. For appeals that have been denied in full, partially approved, dismissed, or canceled, you may file an appeal with the FCC. You should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. Your appeal must be received or postmarked within 60 days of the date on this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554. Further information and options for filing an appeal directly with the FCC can be found in the "Appeals Procedure" posted in the Reference Area of the SLD section of the USAC website or by contacting the Client Service Bureau. We strongly recommend that you use the electronic filing options.

We thank you for your continued support, patience and cooperation during the appeal process.

Schools and Libraries Division
Universal Service Administrative Company

cc: Sr. Olivia Reginella

¹ *Request for Review by Waldwick School District, Schools and Libraries Universal Service Support Mechanism*, File No. SLD-256981, CC Docket Nos. 02-6, Order, 18 FCC Rcd. 22,994, DA 03-3526 (2003).

² *See Instructions for Completing the Schools and Libraries Universal Service, Services Ordered and Certification Form*, OMB 3060-0806 (October 2004) at page 20.



Universal Service Administrative Company
Schools & Libraries Division

Administrator's Decision on Appeal – Funding Year 2005-2006

August 05, 2009

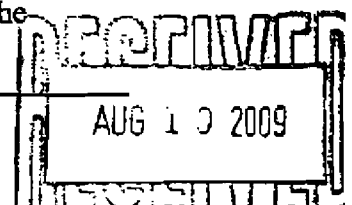
Raymond Barto
Kaps & Barto
15 Warren Street
Hackensack, NJ 07601

Re: Applicant Name: HOLY ROSARY ELEMENTARY ACADEMY
Billed Entity Number: 7008
Form 471 Application Number: 459674
Funding Request Number(s): 1262669, 1262686
Your Correspondence Dated: June 09, 2009

After thorough review and investigation of all relevant facts, the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC) has made its decision in regard to your appeal of USAC's Funding Year 2005 Commitment Adjustment Letter for the Application Number indicated above. This letter explains the basis of USAC's decision. The date of this letter begins the 60 day time period for appealing this decision to the Federal Communications Commission (FCC). If your Letter of Appeal included more than one Application Number, please note that you will receive a separate letter for each application.

Funding Request Number(s): 1262669, 1262686
Decision on Appeal: **Denied**
Explanation:

- During further review, the service provider and applicant were asked to provide a signed copy of their contract. The service provider provided a contract that was not signed. Therefore, USAC was not able to determine if Holy Rosary Elementary Academy had a signed contract in place with the service provider at the time of the filing of the Form 471. Except for services to be delivered under non-contracted tariffed or month-to-month arrangements, FCC rules require that an applicant sign a contract with the service provider before signing and submitting a completed (certified) Services Ordered and Certification Form (Form 471). Applicants must be able to demonstrate that it had a signed contract in place at the time it submitted the completed Form 471. On appeal, you confirm that a copy of the signed contract cannot be located. You also state that the



applicant has complied with state law. Although applicants must comply with state and/or local contract law, applicants must also comply with FCC rules.

- SLD has determined that, at the time you submitted your Form 471 application, you did not have a signed contract for services in place with your service provider(s) for services other than tariffed or month-to-month services. FCC rules require that applicants submit a completed FCC Form 471 "upon signing a contract for eligible services." 47 C.F.R. § 54.504(c). The FCC has consistently upheld SLD's denial of Funding Request Number(s) when there is no contract in place for the funding requested.¹ The FCC Form 471 instructions under Block 5 clearly state that you MUST sign a contract for all services that you order on your Form 471 except tariffed services and month-to-month services.² You did not provide evidence with your appeal that, at the time you signed your Form 471, you had signed a contract for eligible services. Consequently, SLD denies your appeal.

If your appeal has been approved, but funding has been reduced or denied, you may appeal these decisions to either USAC or the FCC. For appeals that have been denied in full, partially approved, dismissed, or canceled, you may file an appeal with the FCC. You should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. Your appeal must be received or postmarked within 60 days of the date on this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554. Further information and options for filing an appeal directly with the FCC can be found in the "Appeals Procedure" posted in the Reference Area of the SLD section of the USAC website or by contacting the Client Service Bureau. We strongly recommend that you use the electronic filing options.

We thank you for your continued support, patience and cooperation during the appeal process.

Schools and Libraries Division
Universal Service Administrative Company

cc: Sr. Olivia Reginella

¹ *Request for Review by Waldwick School District, Schools and Libraries Universal Service Support Mechanism*, File No. SLD-256981, CC Docket Nos. 02-6, Order, 18 FCC Rcd. 22,994, DA 03-3526 (2003).

² *See Instructions for Completing the Schools and Libraries Universal Service, Services Ordered and Certification Form*, OMB 3060-0806 (October 2004) at page 20.



Federal Communications Commission
Washington, D.C. 20554

January 16, 2009

DA 09-86

Mr. Scott Barash
Acting Chief Executive Officer
Universal Service Administrative Company
2000 L Street, N.W.
Suite 200
Washington, DC 20036

Re: Schools and Libraries Program, WC Docket No. 02-6
"Table C" recovery issues

Dear Mr. Barash:

This letter responds to the outstanding policy issues regarding recovery of funds in the schools and libraries universal service program, also known as the E-rate program, on which USAC has sought formal guidance. On March 8, 2006, USAC submitted a memorandum proposing action regarding schools and libraries commitment adjustments and funds recoveries. In that memorandum, USAC submitted lists of recovery situations in a table format: Tables A, B, and C.¹ Table C contained scenarios that were not specifically addressed in the *Schools and Libraries Fifth Report and Order*, and USAC had proposed to seek recovery for the violations listed in Table C.

Those Table C scenarios are outlined in the attached chart. The chart provides our guidance as to when recovery should occur. Generally, we agree with USAC's recommendations to process recoveries for the scenarios listed. However, in certain instances we believe that recovery might not be appropriate for particular factual situations, as explained in detail below and as noted on the chart.

Children's Internet Protection Act (CIPA) Violations: USAC recommended complete recovery in every instance in which the applicant did not comply with all CIPA requirements, which require a school or library to certify that it is enforcing a policy of Internet safety that includes measures to block or filter Internet access for minors and adults to certain visual depictions.² We note, however, that, in certain instances, although the applicant may not have been in technical compliance, there was substantial compliance with the spirit of the CIPA requirements. For example, an audit found that Little Rock School District (Little Rock) was not in compliance with the CIPA requirement to have in place an

¹ Table A contained scenarios that were specifically addressed in the *Schools and Libraries Fifth Report and Order* and in which there was a specific reference in the *Schools and Libraries Fourth Report and Order* as to the party from whom recovery should be directed. Table B contained scenarios that were specifically addressed in the *Schools and Libraries Fifth Report and Order*, but did not have a specific reference in the *Schools and Libraries Fourth Report and Order* as to the party from whom recovery should be directed. See *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Fifth Report and Order and Order, 19 FCC Rcd 15808, (2004) (*Schools and Libraries Fifth Report and Order*); *Federal-State Joint Board on Universal Service*, CC Docket Nos. 96-45, 97-21, 02-6, Order on Reconsideration and Fourth Report and Order, 19 FCC Rcd 15252 (2004) (*Schools and Libraries Fourth Report and Order*).

² See 47 C.F.R. §54.520.

Internet safety policy that addressed measures designed to restrict minors' access to harmful materials. Although Little Rock's Internet safety policy did not address this point, Little Rock did have in place an Internet filter that restricted minors' access to harmful materials. In this case, recovery is not warranted.

Services Delivered to an Entity Not Listed on the FCC Form 471: USAC recommended complete recovery in every instance in which services were delivered to an entity that was not listed in the applicant's FCC Form 471. Pursuant to the Commission's direction in its *Bishop Perry Order*, however, USAC has allowed applicants to modify their FCC Forms 471 for clerical and ministerial errors.³ Accordingly, an applicant first must be given an opportunity to show that the omission of such entity from the FCC Form 471 was a ministerial or clerical error. If such entity would otherwise be eligible, then recovery is not warranted.

No Signed Contract (2004 and Beyond); No Legally Binding Agreement (2003 and Before): Starting in 2004, USAC denied the validity of contracts unless they were signed and dated by both parties. USAC also began to distinguish between contracts and legally binding agreements. USAC based its actions on language in the *Schools and Libraries Fifth Report and Order*, which states that, for recordkeeping purposes, applicants and service providers should keep "executed contracts, signed and dated by both parties."⁴ Consistent with the Commission's direction, contract guidance information posted on USAC's website no longer requires a contract to be signed and dated by both parties.⁵ Thus, USAC should not recover funding if there was a binding agreement that was legal under state law.

Equipment Not Utilized: USAC recommended recovery in every instance in which equipment was not utilized: for example, the equipment was installed but not connected to any computers, or some equipment was still in its original packaging and had not been installed. There could be situations that would justify a decision to not recover funds. For example, in one of the audits, Brownsville Independent School District delayed installation of all equipment due to human resource limitations, but anticipated that very shortly all of the equipment would be installed. In this instance, if the equipment was subsequently installed, recovery would not be warranted.

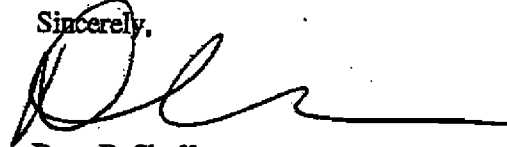
³ See *Request for Review of the Decision of the Universal Service Administrator by Bishop Perry Middle School, et al., Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 21 FCC Rcd 5316 (2006) (*Bishop Perry Order*).

⁴ *Schools and Libraries Fifth Report and Order*, 19 FCC Rcd at 15824, para. 48.

⁵ See USAC website, Contract Guidance, <http://www.usac.org/sl/applicants/step04/contract-guidance.aspx> (retrieved Jan. 16, 2009); *Requests for Waiver of the Decision of the Universal Service Administrator by Adams County School District 14, et al., Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 22 FCC Rcd 6019 (2007) (the Commission granted waivers of rule section 54.504(c) where the petitioners had legally binding agreements in place for the relevant funding years, but missed the deadline for providing evidence of a signed contract).

This letter addresses all of the outstanding issues on which USAC has sought formal guidance from the Commission. Please let me know if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'D. Shaffer', with a long horizontal flourish extending to the right.

Dana R. Shaffer
Chief
Wireline Competition Bureau

Table C Policy Issues

Issue	Relevant Rule	Guidance
1. Technology Plan Deficiency – applicant's technology plan did not have all five criteria.	54.508(a), stating the required elements of a technology plan.	Recover.
2. CIPA certification violations – applicant did not comply with all CIPA requirements.	54.520(c)(1), stating the certifications required by 47 CFR § 254(h) and (I).	Recover generally; however, certain situations may not warrant recovery. <i>See letter.</i>
3. Services delivered to an entity that was not approved to receive the service on FCC Form 471 for the Funding Request Number (FRN).	4 th R & O, 19 FCC Rcd 15252, ¶15, stating that the service provider is likely to be the responsible party if it delivers services that were not approved for funding under the Form 471.	USAC should determine if the entity should have been listed on the FCC Form 471 and, if so, allow the applicant to amend the FCC Form 471. <i>See letter.</i> Otherwise recover.
4. Service provided or equipment installed at an ineligible entity or used for an ineligible purpose.	54.501(b), (c), (d), stating the requirements for eligible entities. 54.505, stating how to determine the discount for an entity. 54.507(g) stating the rules of priority. 4 th R & O, 19 FCC Rcd 15252, ¶15, stating that the service provider is likely to be the responsible party if it delivers services that were not approved for funding under the Form 471.	Recover.
5. Equipment transferred prior to 3 years after purchase or prior to closure of entity.	54.513(c), prohibiting the transfer of equipment for 3 years, with certain exceptions.	Recover.
6. No signed contract (2004 and beyond), No legally binding agreement (2003 and before).	5 th R & O, 19 FCC Rcd 15808, ¶ 48, stating that for recordkeeping purposes, applicants and service providers should keep "executed contracts, signed and dated by both parties."	Do not recover if there was a binding agreement that was legal under state law. <i>See letter.</i>

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Issue	Relevant Rule	Guidance
7. Non-telecommunications carrier provided telecommunications services.	54.501(a), stating that only telecom carriers may receive E-rate support for providing telecom services.	Recover.
8. Failure to bill for the non-discounted portion.	54.523, requiring applicants to pay their share.	Recover.
9. Funding disbursed priority two services below the funding threshold. This occurs when USAC funds priority one services that are actually priority two services because the entity has improperly categorized them and the entity's discount level is below the fundable priority two threshold for that funding year.	54.507(g), stating the rules of priority.	Recover.
10. Free services not deducted from the total pre-discounted cost of services and thus used to provide ineligible items or to provide a greater discount rate than that to which the applicant is entitled.	54.523, requiring applicants to pay their share, prohibiting the provision of rebates, defining rebates to include free services or products.	Recover.
11. Equipment not utilized (equipment has been installed but no computers are connected, or that some equipment is still in its original packaging and has not been installed).	54.507(d), setting forth the implementation deadline for non-recurring services. 54.504(b), 54.504(b)(2)(ii), requiring applicants to use services and equipment only for educational purposes.	Recovery depends on the individual situation.

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Issue	Relevant Rule	Guidance
12. Could not locate equipment.	<p>54.504(b), 54.504(b)(2)(ii), requiring applicants to use services and equipment only for educational purposes.</p> <p>54.516(a), requiring applicants to maintain asset and inventory records of equipment purchased as components of supported internal connections services sufficient to verify the actual location of such equipment for 5 years.</p>	Recover.

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